STATE OF MICHIGAN

COURT OF APPEALS

CHAD STITES,

Plaintiff-Appellant,

v

JEFFREY STICKNEY, D.O., JEFFREY STICKNEY, D.O., P.C., and INDUSTRIAL MEDICINE ASSOCIATES,

Defendants-Appellees.

UNPUBLISHED
November 15, 2007

No. 273722
Lenawee Circuit Court
LC No. 04-001538-NH

Before: Wilder, P.J., and Cavanagh and Fort Hood, JJ.

PER CURIAM.

Following a jury verdict in favor of defendants, the trial court entered a judgment of no cause of action in this medical malpractice action. The trial court thereafter denied plaintiff's post-judgment motion for a new trial. Plaintiff appeals as of right. We affirm.

I. Factual Background

This action arises from defendant Dr. Jeffrey Stickney's[1] diagnosis and treatment of plaintiff's wrist injury that he sustained in a fall at work in November 2001. Plaintiff alleged that defendant misdiagnosed the injury as a wrist sprain. He further alleged that defendant's subsequent treatment regimen and failure to immediately refer him to a hand surgeon caused his wrist bones to become disorganized. Defendant eventually referred plaintiff to a hand specialist, Dr. Raymond Noellert, in February 2002. Dr. Noellert stated that because the joint surface cartilage of plaintiff's wrist bones were severely eroded, he had to fully fuse the wrist.[2] As a result, plaintiff's range of motion was limited to rotation.

Defendants did not dispute that defendant Dr. Stickney failed to recognize and appreciate the abnormal size of space between two of plaintiff's wrist bones, the scaphoid and the lunate,

[1] The singular term "defendant" is used to refer to defendant Dr. Stickney only.

[2] Joint surfaces are eroded when the bones are allowed to rub together such as when the ligaments connecting them have been damaged.

which was indicative of a ligamentous injury to one or both of the ligaments connecting these bones. However, they theorized that one or both of these ligaments were damaged in 1994, when plaintiff broke his forearm during a wrestling match and that long-term degenerative changes necessitated plaintiff's wrist fusion.

II. Expert Testimony

Plaintiff argues that the trial court erred in allowing expert opinions by defendant and Dr. Michael Potchen. This Court reviews for an abuse of discretion a trial court's decisions regarding the qualification of a witness as an expert and the admissibility of expert testimony. *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Plaintiff argues that defendant and Dr. Potchen's testimony was inadmissible under MRE 702. A witness qualified as an expert may testify to knowledge by opinion or otherwise if the testimony is based on sufficient facts, is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case. MRE 702. A witness may be considered an expert based on his knowledge, skill, expertise, training, or education. MRE 702; *Mulholland v DEC Int'l Corp*, 432 Mich 395, 403; 443 NW2d 340 (1989).

Plaintiff asserts that defendant and Dr. Potchen were not qualified to testify that plaintiff's damages were the result of long-term degenerative changes in his wrist stemming from his 1994 injury, because defendant had never seen or treated "this type of injury"[3] and Dr. Potchen did not treat wrist injuries. We disagree. Plaintiff does not dispute that Dr. Potchen, a radiologist, had the training, education, and experience to render an opinion about what the 1994 and 2001 x-rays revealed. This same training and education qualified Dr. Potchen to testify about the general degenerative process of ligaments after injury.

Defendant was a board certified physician in family and occupational medicine. He testified that he had treated patients with degenerative changes in the wrist bones and had specific training in the form of continuing education regarding that specific degenerative process. Plaintiff takes issue with defendant's qualifications because he had not treated a perilunate dislocation before. However, although that may have been Dr. Noellert's diagnosis, Dr. Noellert testified that the full wrist fusion was necessary because of the degree of joint surface erosion, not simply because of the dislocated bone.

Plaintiff also argues that the witnesses' opinions were inadmissible under MRE 702 because they were not based on sufficient facts or data and were not the product of reliable methods or principles. This argument is without merit. The opinions rendered by Dr. Potchen were based on the 1994 and 2001 x-rays and his knowledge of how healed ligament injuries react over time. Regarding defendant's opinions, they were based on his knowledge of the

---

[3] Plaintiff did not specify the type in his argument. However, he referred below to a perilunate dislocation.

degenerative process in joints, particularly where the joint had been compromised due to ligamentous injury, plaintiff's history as presented to him, his findings throughout plaintiff's treatment, and Dr. Noellert's ultimate findings. We fail to see how the information on which the witnesses relied was insufficient or how their methods were unreliable. Further, because their testimony was based on their knowledge in the medical field, we reject plaintiff's contention that it was speculative. *Craig v Oakwood Hosp*, 471 Mich 67, 79; 684 NW2d 296 (2004).

For these reasons, we hold that the trial court did not abuse its discretion in admitting defendant's and Dr. Potchen's testimony.

III. Plaintiff's Motion for New Trial

Plaintiff argues that the trial court should have granted his motion for a new trial because there was no evidence to support defendants' theory of the case and thus, the jury's verdict was against the great weight of the evidence. This Court reviews for an abuse of discretion the trial court's grant or denial of a motion for a new trial. *Allard v State Farm Ins Co*, 271 Mich App 394, 406; 722 NW2d 268 (2006).

A new trial may be granted if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e); *Domako v Rowe*, 184 Mich App 137, 144; 457 NW2d 107 (1990), aff'd 438 Mich 347 (1991). The jury's verdict should not be set aside if there is competent evidence to support it; the trial court cannot substitute its judgment for that of the factfinder. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999).

In a medical malpractice action, the plaintiff must show: (1) the applicable standard of care, (2) a breach of that standard by the defendant, (3) an injury, and (4) proximate causation between the breach and the injury. *Woodard v Custer*, 473 Mich 1, 6; 702 NW2d 522 (2005). The jury found that defendants breached the applicable standard of care and that plaintiff suffered damages, but it found no cause of action because it did not believe that defendants' breach was the proximate cause of plaintiff's damages.

Plaintiff's damages consisted of his full wrist fusion and losses stemming from it. Because the severity of the joint surface abnormalities necessitated the full fusion, the question for the jury was whether defendant's conduct proximately caused the level of wrist bone surface erosion that Dr. Noellert discovered.

"To establish proximate cause, the plaintiff must prove the existence of both cause in fact and legal cause." *Weymers v Khera*, 454 Mich 639, 647; 563 NW2d 647 (1997). Cause in fact is established when the plaintiff presents "substantial evidence from which a jury may conclude that more likely than not, but for the defendant's conduct, the plaintiff's injuries would not have occurred." *Id*. at 647-648 (citation and footnote omitted). The evidence must establish more than a mere possibility of causation. *Id*. at 648. "To establish legal cause, the plaintiff must show that it was foreseeable that the defendant's conduct 'may create a risk of harm to the victim, and . . . [that] the result of that conduct and intervening causes were foreseeable.'" *Id*., quoting *Moning v Alfono*, 400 Mich 425, 439; 254 NW2d 759 (1977).

Plaintiff argues that defendants' theory was pure speculation and thus, there was no competent evidence to support it. However, the jury did not need to believe defendants' theory

to find that defendant's conduct did not proximately cause plaintiff's damages. Plaintiff's allegations of breach were multi-faceted. Plaintiff alleged and argued at trial that the standard of care was breached by defendant's failure to properly diagnose plaintiff's injury and also by his failure to properly treat him by not immediately referring him to Dr. Noellert. The jury could have found that defendant should have seen and appreciated the size of the scapholunate interval on the 2001 x-rays, but that his treatment did not breach the standard of care. Thus, the jury could have further found that any standard of care error by defendant did not proximately cause the joint surface abnormalities encountered by Dr. Noellert, even if it believed that plaintiff's wrist joint surfaces were not significantly eroded at the time of his 2001 fall as Dr. Noellert testified. Because such a determination was supported by competent evidence, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

When defendant diagnosed plaintiff's injury as a wrist sprain, he ordered plaintiff to immediately begin wearing a splint at all times, except bathing, in order to immobilize his wrist and give it an opportunity to heal. At no time during defendant's treatment of plaintiff did defendant discontinue use of the splint. Defendant testified that he told plaintiff on November 21, 2001, to wear the splint at work and during any activities that would increase his risk of injury. Plaintiff testified that defendant told him to wear the splint at work and "what not." He did not specify at what time defendant told him this.

Defendant's notes in plaintiff's medical record reflected that at plaintiff's December 12, 2001, visit, plaintiff reported that he had stopped wearing the splint and taking his medication. Defendant told plaintiff to wear the splint. Defendant's notes indicated that at plaintiff's two subsequent visits, plaintiff reported that he wore his splint at work and "some nights." Plaintiff's only testimony on this point was that he did not have to wear the splint all the time, "so I could take it off to do certain activities, like bathing and whatnot," but religiously wore it at work. Defendant's notes also contained an entry by his physician's assistant on December 19, 2001, that plaintiff was advised to not play video games. Plaintiff testified that he did not remember the comment and denied playing video games. In addition, the physical therapy report from February 15, 2002, stated that plaintiff reported that he accidentally jammed his fist into a board at work. Plaintiff stated that he did not remember a specific incident, but that it was "an everyday occurrence" at work.

From this evidence, the jury could have inferred that plaintiff did not wear his splint at all times that he should have. It did not have to believe all of plaintiff's testimony. Also, defendant and Dr. Noellert both testified that use of the wrist when there is ligamentous instability accelerates degeneration. Thus, the jury could have reasonably inferred that plaintiff's use of his hand without his splint or during hand-intensive activities accelerated the bones' joint surface erosion and eventual disorganization. Such findings by the jury would negate a finding of cause in fact, i.e., the jury could conclude that there was not substantial evidence to allow it to find that more likely than not, but for the defendant's failure to see and appreciate the abnormal

scapholunate interval, plaintiff would not have had his wrist fully fused. Without cause in fact, the element of proximate cause is not satisfied.[4]

Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion for a new trial.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood

[4] Plaintiff also asserted that the jury verdict was inconsistent. A jury's verdict will be upheld, even if it is arguably inconsistent, where there is an interpretation of the evidence that provides a logical explanation for the findings of the jury. *Bean v Directions Unlimited, Inc*, 462 Mich 24, 31; 609 NW2d 567 (2000). Because the jury verdict may be premised on the jury's acceptance of some testimony and rejection of other testimony, we cannot conclude that the verdict was inconsistent. *Id*.